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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

EPA Region 5 Records Ctr.



262110

UNITED STATES OF AMERICA,

Plaintiff,

v.

ACCURATE PARTITIONS CORP., ET AL.

Defendants.

CIVIL ACTION NO.

S91-00646M

CONSENT DECREE

TABLE OF CONTENTS

I.	PURPOSE OF DECREE	5
II.	JURISDICTION	5
III.	PARTIES BOUND	6
IV.	DEFINITIONS	6
V.	GENERAL PROVISIONS	11
VI.	PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS	13
VII.	ADDITIONAL WORK AND MODIFICATION OF THE SOW	22
VIII.	U.S. EPA PERIODIC REVIEW TO ASSURE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT	23
IX.	QUALITY ASSURANCE	24
X.	FACILITY ACCESS, SAMPLING, DOCUMENT AVAILABILITY	25
XI.	REPORTING REQUIREMENTS	28
XII.	REMEDIAL PROJECT MANAGER/PROJECT COORDINATORS	30
XIII.	FORCE MAJEURE	31
XIV.	DISPUTE RESOLUTION	33
XV.	RETENTION AND AVAILABILITY OF INFORMATION	36
XVI.	REIMBURSEMENT	38
XVII.	STIPULATED PENALTIES	40
XVIII.	COVENANT NOT TO SUE	46
XIX.	INDEMNIFICATION; OTHER CLAIMS	50
XX.	INSURANCE/FINANCIAL RESPONSIBILITY	51
XXI.	NOTICES	52
XXII.	CONSISTENCY WITH NATIONAL CONTINGENCY PLAN	53
XXIII.	ENDANGERMENT AND EMERGENCY RESPONSE	54
XXIV.	COMMUNITY RELATIONS	55

XXV.	RETENTION OF JURISDICTION; MODIFICATION	55
XXVI.	EFFECTIVE DATE AND CERTIFICATION OF COMPLETION . . .	56
XXVII.	<u>DE MINIMIS</u> PROVISIONS	57
XXVIII.	EFFECT OF DECREE	61

List of Appendices

- Appendix 1 - Record of Decision
- Appendix 2 - Scope of Work
- Appendix 3 - (Deleted)
- Appendix 4 - List of Settling Defendants
- Appendix 5 - De Minimis Shares and Payments

WHEREAS, The United States Environmental Protection Agency ("U.S. EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9605, placed the Fisher-Calo Chemical Company site located in the Kingsbury Industrial Development Park, La Porte County, Indiana (the "Facility" as specifically defined in Paragraph 4 of this Consent Decree) on the National Priorities List, which is set forth at 40 CFR Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40671 (September 8, 1983);

In response to a release or a substantial threat of a release of a hazardous substance at or from the Facility, U.S. EPA in April of 1985, commenced a Remedial Investigation and Feasibility Study ("RI/FS") pursuant to 40 CFR 300.68 for the Facility;

U.S. EPA completed a Remedial Investigation ("RI") Report in May of 1989, and completed a Feasibility Study ("FS") Report in April of 1990;

Based upon the information contained in the RI/FS, U.S. EPA prepared a proposed plan;

On or about April 13, 1990, U.S. EPA, pursuant to Section 117 of CERCLA, 42 U.S.C. §9617, published notice of the completion of the RI/FS and of the proposed plan for remedial action, in a major local newspaper of general circulation and provided opportunity for public comment to be submitted in

writing to U.S. EPA by May 13, 1990, or orally at a public meeting held in the City of La Porte, Indiana, on April 26, 1990; the public comment period was extended upon the request of the PRP Steering Committee until June 13, 1990;

U.S. EPA, pursuant to Section 117 of CERCLA, 42 U.S.C. §9617, has kept a transcript of the public meeting and has made this transcript available to the public as part of the administrative record located at U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois and at the La Porte Public Library, 904 Indiana Avenue, La Porte, Indiana, 46350;

On October 4, 1990, U.S. EPA, pursuant to Section 122 of CERCLA, 42 U.S.C. §9622, notified certain parties that U.S. EPA determined each party to be a potentially responsible party ("PRP") regarding the proposed remedial action at the Facility;

In accordance with Section 121(f)(1)(F) of CERCLA, 42 U.S.C. §9621(f)(1)(F), U.S. EPA notified the State of Indiana on October 4, 1990, of negotiations with PRPs regarding the scope of the remedial design and remedial action for the Facility, and U.S. EPA has provided the State with an opportunity to participate in such negotiations and be a party to any settlement;

Pursuant to Section 122(j) of CERCLA, 42 U.S.C. §9622(j), on October 4, 1990, U.S. EPA notified the Federal natural resource trustee of negotiations with PRPs on the subject of addressing the release or threatened release of hazardous substances at the Facility;

Certain persons have provided comments on U.S. EPA's proposed plan for remedial action, and to such comments U.S. EPA provided a summary of responses, all of which have been included in the administrative record referred to above;

Considering the proposed plan for remedial action and the public comments received, U.S. EPA has reached a decision on a final remedial action plan, which is embodied in a document called a Record of Decision ("ROD") signed by the Regional Administrator on August 7, 1990, (attached as Appendix 1 hereto), to which the State has given its concurrence, and which includes a discussion of U.S. EPA's reasons for the final plan and for any significant changes from the proposed remedial action plan contained in the FS;

U.S. EPA, pursuant to Section 117(b) of CERCLA, 42 U.S.C. §9617(b), has provided public notice of adoption of the final remedial action plan set forth in the ROD, including notice of the ROD's availability to the public for review in the same locations as the administrative record referred to above;

Pursuant to Section 117(d) of CERCLA, 42 U.S.C. §9617(d), the notice has been published in a major local newspaper of general circulation, and the notice includes an explanation of any significant changes from the proposed remedial action plan contained in the FS and the reasons for such changes;

Pursuant to Section 121(d)(1) of CERCLA, 42 U.S.C. §9621(d)(1), U.S. EPA, the State, Settling De Minimis Defendants, and Settling Defendants ("the Parties") believe that the remedial

action plan adopted by U.S. EPA will attain a degree of cleanup of hazardous substances, pollutants and contaminants released into the environment and of control of further release which at a minimum assures protection of human health and the environment at the Facility;

The Parties believe the remedial action plan adopted by U.S. EPA will provide a level or standard of control for such hazardous substances, pollutants, or contaminants which at least attains legally applicable or relevant and appropriate standards, requirements, criteria, or limitations under Federal environmental law or State environmental or facility siting law in accordance with Section 121(d)(2) of CERCLA, 42 U.S.C. §9621(d)(2), and that the remedial action plan is in accordance with Section 121 of CERCLA, 42 U.S.C. §9621, and consistent with the National Contingency Plan ("NCP"), 40 CFR Part 300;

Settling Defendants agree to implement the final remedial action plan adopted by U.S. EPA in the ROD, as set forth in Appendix 1 to this Consent Decree and incorporated by reference into this Decree, with the following modifications: the cleanup level for bis(2-ethylhexyl) phthalate shall be 6.1 ppm; no cleanup level for isophorone shall be imposed; incineration of contaminated soils may occur either on-site or off-site; treated groundwater may be either reinjected or discharged in a manner determined by U.S. EPA to be appropriate; fencing need be installed only to limit access to those areas where soil remediation will occur; and neither an asbestos assessment nor

asbestos removal/repair shall be required. U.S. EPA and the State have determined that the work required under the Consent Decree will be done properly by Settling Defendants and that Settling Defendants are qualified to implement the remedial action plan contained in the ROD, with the modifications set forth in this paragraph.

U.S. EPA has determined that the requirements of 122(g) of CERCLA, 42 U.S.C. Section 9622(g), are satisfied with regard to the settlement with the Settling De Minimis Defendants, as provided in Section XXVII of this Consent Decree.

The Parties recognize, and intend to further hereby, the public interest in the expedition of the cleanup of the Facility and in avoiding prolonged and complicated litigation between the Parties;

NOW, THEREFORE, it is hereby Ordered, Adjudged and Decreed:

I. PURPOSE OF DECREE

1. The purpose of this Consent Decree is to provide for implementation by Settling Defendants of the final remedial design and remedial action for the Facility selected by U.S. EPA, as set forth in the Record of Decision attached as Appendix 1, with the modifications described above, and to provide for payment of certain response costs incurred and to be incurred by the United States and the State for the Facility.

II. JURISDICTION

2. This Court has jurisdiction over the subject matter herein pursuant to 23 U.S.C. §§1331(a) and 1345, and 42 U.S.C. §§9613(b) and 9622(d)(1)(A), and over the parties consenting hereto. Settling Defendants and Settling De Minimis Defendants hereby waive service of the summons and complaint in this action.

III. PARTIES BOUND

3. This Consent Decree applies to and is binding upon the undersigned parties and their agents, successors and assigns. The undersigned representative of each party to this Consent Decree certifies that he or she is fully authorized by the party or parties whom he or she represents to enter into the terms and conditions of the Consent Decree and to execute and legally bind that party to it. Settling Defendants shall provide a copy of this Consent Decree to the contractors hired to perform the work required by this Consent Decree and shall require the contractors to provide written notice of the decree to any subcontractor retained to perform any part of the work.

IV. DEFINITIONS

4. Whenever the following terms are used in this Consent Decree and the Appendices attached hereto, the following definitions shall apply:

"Cleanup and Performance Standards" means the requirements respecting the degree of cleanup of groundwater, surface water, soil, air or other environmental media that must be achieved by the remedial action, as set forth in the ROD, paragraph 12 of this Decree, and the SOW.

"Consent Decree" means this Decree and all appendices hereto. In the event of conflict between this Decree and any appendix, the Decree shall control.

"Contractor" means the company or companies retained by or on behalf of Settling Defendants to undertake and complete the work required by this Consent Decree. Each contractor and subcontractor shall be qualified to do those portions of the work for which it is retained. Each contractor and subcontractor shall be deemed to be related by contract to each Settling Defendant within the meaning of 42 U.S.C. §9607(b).

"Facility" refers to the location where treatment, storage, disposal or other placement of hazardous substances was conducted by Fisher-Calo Chemical Company, and those areas where such substances have come to be located, which facility is located in the Kingsbury Industrial Development Park, La Porte County, State of Indiana, and includes the "Fisher-Calo Chemical Corporation site" as that term is used in the Record of Decision and Scope of Work (as defined herein).

"Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

"IDEM" means the Indiana Department of Environmental Management.

"National Contingency Plan" or "NCP" means the term used in Section 105 of CERCLA, 42 U.S.C. §9605 and is promulgated at 40 CFR Part 300.

"Oversight Costs" means any costs not inconsistent with the National Contingency Plan incurred by U.S. EPA or the State in monitoring the compliance of the Settling Defendants with this Consent Decree, including but not limited to payroll and other direct costs, indirect and overhead costs, sampling and laboratory costs, travel, contractor costs and costs of review of the work performed pursuant to this Consent Decree.

"Parties" means the United States of America, the State of Indiana, the Settling Defendants and the Settling De Minimis Defendants.

"RD Work Plan and RA Work Plan" mean respectively plans for the remedial design and implementation of the remedial action for the Facility, as described in paragraph 13.

"Record of Decision" or "ROD" means the administrative Record of Decision relating to the Fisher-Calo facility issued by U.S. EPA on August 7, 1990, setting forth the remedial action requirements for the Facility, attached as Appendix 1 hereto.

"Record of Decision with modifications" or "ROD with modifications" means the Record of Decision with the following modifications: the cleanup level for bis(2-ethylhexyl) phthalate shall be 6.1 ppm; no cleanup level for isophorone shall be imposed; incineration of contaminated soils may occur either on-site or off-site; treated groundwater may be either reinjected or discharged in a manner determined by U.S. EPA to be appropriate; fencing need be installed only to limit access to those areas where soil remediation will occur; and neither an

asbestos assessment nor asbestos removal/repair shall be required.

"Remedial Construction" means those activities undertaken by Settling Defendants to implement the RD Work Plan and the RA Work Plan, with the exception of operation and maintenance of the soil treatment system(s) and the groundwater extraction and treatment system; implementation of the groundwater contingency plan; and long-term, groundwater monitoring.

"Remedial Project Manager" or "RPM" means the person designated by U.S. EPA to coordinate, monitor or direct remedial activities at the Facility pursuant to 40 CFR 300.33 and Section XII hereof.

"Response Costs" means any costs not inconsistent with the National Contingency Plan incurred by the United States or the State pursuant to 42 U.S.C. §§9601 et seq.

"Scope of Work" or "SOW" means the plan, set forth as Appendix 2 to this Decree, for implementation of the remedial design and remedial action at the Facility pursuant to the ROD with modifications, and any subsequent amendments of Appendix 2 pursuant to the provisions of this Decree.

"Settling Defendants" means those parties listed in Appendix 4 to this Consent Decree who have signed the Decree.

"Settling De Minimis Defendants" means those parties listed in Appendix 5 to this Consent Decree who have signed the Decree.

"State" means the State of Indiana.

"United States" means the United States of America.

"U.S. EPA" means the United States Environmental Protection Agency.

"U.S. DOJ" means the United States Department of Justice.

"Work" means the design, construction and implementation, in accordance with this Consent Decree, of the tasks described in the ROD, this Decree, the Scope of Work, the RD Work Plan and the RA Work Plan, and any other plans or schedules submitted and approved by U.S. EPA in consultation with the State pursuant to this Decree or the SOW. The following are the major components of the Remedial Action: installation of security fences; excavation and incineration of soils which contain bis (2-ethylhexyl) phthalate or PCBs above established cleanup levels; soil flushing or, if proven in an on-site, pilot study to be equally effective, soil vapor extraction or nutrient additions to soil flushing for those soils contaminated with volatile organic compounds which remain after excavation; performance of the Toxicity Characteristic Leaching Procedure (TCLP) test on the incineration ash residue to determine whether the untreated ash may be disposed of on site; groundwater collection, treatment, and discharge; installation and operation of a groundwater monitoring well system and a new production well; soil gas testing, test pit excavation and, as necessary, appropriate remediation of Space Leasing and Kingsbury Industrial Development Park properties; scoping and removal, if necessary, of drums or other containers on the One-Line Road facility and on Kingsbury Industrial Development Park property

immediately south of the National Packaging Building; and development of a groundwater contingency plan.

V. GENERAL PROVISIONS

5. Commitment of Settling Defendants to Perform RD/RA.

a. Settling Defendants agree jointly and severally to finance and perform the Work as defined in paragraph 4 hereof.

b. The Work shall be completed in accordance with all requirements of this Decree, the ROD with modifications, the SOW, the RD Work Plan and the RA Work Plan and all other plans or schedules submitted and approved by U.S. EPA after consultation with the State under this Decree. The procedures for submission and approval of plans are set forth in Section VI below.

6. Compliance with Applicable Laws; Permits and Approvals

a. All activities undertaken by the Settling Defendants pursuant to this Consent Decree shall be undertaken in accordance with the requirements of all applicable federal and state laws, regulations and permits, as required by CERCLA.

b. Pursuant to Section 121(e) (1) of CERCLA, no federal, state, or local permits are required for work conducted entirely on the Facility. Settling Defendants shall obtain all permits or approvals necessary for work off the Facility under applicable federal, state or local laws and shall submit timely applications and requests for any such permits and approvals.

c. The standards and provisions of Section XIII hereof describing Force Majeure shall govern delays in obtaining permits required for the Work and also the denial of any such

permits, provided that Settling Defendants have made timely and complete application for any such permits.

d. Settling Defendants shall include in all contracts or subcontracts entered into for work required under this Consent Decree, provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and regulations.

e. This Consent Decree is not a permit issued pursuant to any federal or state statute or regulation.

7. Formal Approval Required. No informal advice, guidance, suggestions or comments by representatives of the United States or the State on plans, reports or other documents submitted by the Settling Defendants shall be construed as relieving them from obtaining any formal approvals, permits or other authorizations required by law or by this Decree. Further, no advice, guidance, suggestions or comments by such government representatives with respect to any submission by the Settling Defendants shall be construed so as to relieve them of their obligations under this Decree or to transfer any of their liability or obligations under this Decree to any other party or person.

8. Computation of Time. Unless otherwise provided, dates and time periods specified in or under this Decree are in calendar days. If the date for submission of any item or notification required by this Decree falls upon a weekend or

state or federal holiday, the time period for submission of that item or notification is extended to the next working day following the weekend or holiday. Submission shall be deemed accomplished when the item is delivered or mailed to the required party or parties.

9. Recordation of Decree. Within thirty days of approval by the Court of this Decree, the State shall record a copy of this Decree with the Recorder's Office, La Porte County, State of Indiana, in the chain of title for each parcel of Facility.

VI. PERFORMANCE OF THE WORK

BY SETTling DEFENDANTS

10. Selection of Architect/Engineer and Contractor.

a. Architect/Engineer. All remedial design work to be performed by Settling Defendants pursuant to this Consent Decree shall be under the direction and supervision of a qualified professional architect or engineer. Selection of any such architect or engineer is subject to approval by U.S. EPA in consultation with the State. Such approval shall be communicated as promptly as possible.

b. Contractor. All remedial action work to be performed by the Settling Defendants pursuant to this Consent Decree shall be under the direction and supervision of a qualified professional engineer. As soon as possible after entry of the Decree, and at least 30 days prior to the date upon which initiation of remedial action work is required under this Decree,

the Settling Defendants shall notify U.S. EPA and the State, in writing, of the name, title, and qualifications of the proposed engineer, and the names of principal contractors and subcontractors proposed to be used in carrying out the Work to be performed pursuant to this Consent Decree. Selection of any such engineer or contractor and/or subcontractor shall be subject to approval by the U.S. EPA in consultation with the State. Such approval or disapproval shall be communicated as promptly as possible.

c. Disapproval of Architect/Engineer or Contractor.

If U.S. EPA disapproves of the initial or subsequent selection of an architect or contractor, Settling Defendants shall submit a list of alternate architects or contractors to U.S. EPA and the State within 30 days of receipt of the notice of disapproval. Within 14 days from receipt of the list, U.S. EPA in consultation with the State shall provide written notice of the names of the architects, engineers or contractors on the list of which it approves. Settling Defendants may select any approved architect, engineer or contractor from the list and shall notify U.S. EPA and the State of the name of the person or entity selected within 21 days of receipt of the list. If U.S. EPA does not approve or disapprove of any proposed architect or contractor or any proposed list of alternate architects or contractors within 14 days and the delay prevents Settling Defendants from

meeting one or more deadlines in a plan approved by U.S. EPA pursuant to this Decree, Settling Defendants may seek relief under the provisions of Section XIII hereof.

d. Replacement of Architect/Engineer or Contractor. If at any time Settling Defendants propose to change an architect, engineer or contractor previously approved by U.S. EPA, they shall give written notice to U.S. EPA and the State of the name, title and qualifications of the proposed new architect, engineer or contractor. Such architect, engineer or contractor shall not perform any Work until approval by U.S. EPA in consultation with the State has been given.

11. Scope of Work. Appendix 2 to this Consent Decree provides a Scope of Work ("SOW") for the completion of remedial design and remedial action at the Facility. This Scope of Work is incorporated into and made an enforceable part of this Consent Decree.

12. Cleanup and Performance Standards. The Work performed under this Consent Decree shall meet all Cleanup and Performance Standards set forth in the SOW, as summarized below:

a. Fencing.

Settling Defendants shall fence the facility in a manner sufficient to prevent access to those portions of the One-Line Road facility, Two-Line Road facility, National Packaging facility, and Space Leasing facility where soil remediation will occur as indicated in ROD figures 10-12 (attachments 2-4 to the SOW).

b. Soil Cleanup.

During Remedial Action, Settling Defendants shall excavate all soils contaminated with PCBs in excess of 10 ppm or bis(2-ethylhexyl) phthalate in excess of 6.1 ppm. Settling Defendants shall treat soils contaminated with VOCs in order to reduce the contamination to levels to be determined by U.S. EPA during Remedial Design. However, if U.S. EPA determines that the VOC soil cleanup levels established in this manner are not attainable by the soil flushing or soil vapor extraction technologies, then the VOC soil cleanup levels shall be modified based on the best demonstrated capabilities of these technologies and supported by site-specific data. Soil Vapor Extraction ("SVE") may be used to treat these soils provided that a pilot study, in U.S. EPA's judgment, establishes soil vapor extraction to be equally or more effective as soil flushing in achieving the VOC soil cleanup levels.

c. Groundwater Remediation.

Settling Defendants shall operate an extraction and treatment system to reduce the concentration of each of the following contaminants in the groundwater to or below the indicated cleanup level, and thereafter ensure that the level is not exceeded:

trichloroethylene	5 ppb
trans 1,2 dichloroethylene	70 ppb
1,1,1-trichloroethane	200 ppb
methylene chloride	5 ppb
vinyl chloride	2 ppb

Following extraction, Settling Defendants shall pump the groundwater to an equalization/sedimentation basin and shall then pass it through an air stripper tower. Treated groundwater shall be either pumped to an injection system and then reinjected to optimize flushing and plume containment or, if SVE is used, disposed of in a manner which shall minimize any impacts to nearby wetlands and which shall not adversely impact the effectiveness of the SVE program.

d. Groundwater Monitoring System.

Settling Defendants shall install a monitoring well system to periodically assess whether the groundwater extraction and treatment system is achieving groundwater cleanup levels and to conduct hydraulic monitoring to assess the effectiveness of the groundwater extraction system in containing the contaminant plumes as defined in Section II.C.1. of the SOW. In the event that: (1) for two consecutive monitoring events, the concentration of any monitored contaminant, other than the five contaminants listed in Section II.C.1. of the SOW, exceeds the action level for that contaminant in the Contingency Plan submitted pursuant to Section III.A.3. of the SOW, and as approved by U.S. EPA, or exceeds background levels (as suggested by Settling Defendants but to be finally determined by U.S. EPA), whichever is higher; or (2) the hydraulic monitoring indicates that the groundwater extraction system is not effectively containing the contaminant plumes as defined in Section II.C.1. of the SOW and preventing their further westerly migration,

Settling Defendants shall evaluate and, if determined to be necessary by U.S. EPA, modify the groundwater extraction and treatment system in accordance with the approved Contingency Plan.

e. New Production Well.

Settling Defendants shall install a new production well which shall be capable of producing at least 500 gallons of water per minute, and shall be located outside of the influence of the extraction well system and any area of contamination.

f. Location and Disposal of Containers.

Settling Defendants shall remove and dispose of all waste containers found in the areas indicated in SOW attachments 5 and 6 hereto and the areas immediately surrounding them. Soil sampling shall be conducted in the vicinity of all containers to determine the nature and extent of any soil contamination. If the sampling reveals the presence of contamination, remedial action shall be taken in accordance with the U.S. EPA-approved Container Location and Disposal Plan (submitted in accordance with section III.A.4 of the SOW). If Settling Defendants establish that containers located in the vicinity of the National Packaging Building or the Cardinal Chemical Building are owned by the current property owners and/or occupants, or parties other than the Settling Defendants or Fisher-Calo Chemicals and Solvents Corp. or David B. Fisher, Settling Defendants, subject to U.S. EPA approval, may exempt the removal of such containers from the remedial action.

g. Construction Deadline.

Settling Defendants shall complete all Remedial Construction within 3.5 years of U.S. EPA's approval of the RA Work Plan, provided, however, that such period shall be extended as applicable, pursuant to section III.B.7. of the SOW.

13. Work Plan.

a. Within 150 days of the lodging of this Consent Decree, Settling Defendants shall commence remedial design work by submitting to U.S. EPA and the State the RD Work Plan which shall include the following documents: (1) Site Access and Permitting Plan; (2) Sampling and Analysis Plan; (3) Groundwater Contingency Plan; (4) Container Location and Disposal Plan; (5) VOC Emissions Minimization Plan; (6) Additional Studies Plan, and (7) RD Implementation and RA Design Submittal Schedules. Settling Defendants shall not be required to pay any Oversight Costs for U.S. EPA's or the State's review of their work prior to entry of the decree under this paragraph, but following entry shall pay all such oversight costs that accrued prior to entry pursuant to Section XVI hereof.

b. In accordance with the RD Work Plan schedule for submission of the components of the Remedial Action Work Plan, as approved or modified by U.S. EPA, or within 60 days of the entry of this Consent Decree, whichever is later, Settling Defendants shall submit to U.S. EPA and the State the RA Work Plan Preliminary Design Package for performance of the remedial action, which shall include drafts of the following documents:

(1) Design Plans and Specifications; (2) Construction Quality Assurance Plan; (3) Health and Safety Plan; (4) Emergency Contingency Plan; and (5) Operation and Maintenance Plan.

c. Within 90 days of receipt of U.S. EPA comments on the Preliminary Design Package, Settling Defendants shall submit to U.S. EPA and the State the RA Work Plan Pre-Final Design Package which shall include revised drafts of all documents listed in paragraph b above, as well as a cost estimate and a project schedule.

d. Within 30 days of receipt of U.S. EPA comments on the RA Work Plan Pre-Final Design Package, Settling Defendants shall submit to U.S. EPA and the State the RA Work Plan Final Design Package.

e. Within 90 days of completion of all remedial construction activities, Settling Defendants shall submit to U.S. EPA and the State the final Operation and Maintenance Plan.

f. All plans and schedules submitted shall be developed in conformance with the ROD, the SOW, U.S. EPA Superfund Remedial Design and Remedial Action Guidance and any additional guidance documents provided by U.S. EPA that are in effect at the time of plan submission. If an applicable U.S. EPA guidance document is changed or is issued which requires modification of plans under development, U.S. EPA may adjust deadlines of such plans as U.S. EPA deems necessary to incorporate such guidance into the plan being developed.

g. All plans and schedules shall be subject to review, modification and approval by U.S. EPA, in consultation with the State, in accordance with the procedures set forth in paragraph 14 below.

h. All approved plans and all approved schedules shall be deemed incorporated into and made an enforceable part of this Consent Decree. All work shall be conducted in accordance with the National Contingency Plan, the U.S. EPA Superfund Remedial Design and Remedial Action Guidance, and the requirements of this Consent Decree, including the standards, specifications and schedule contained in the RD Work Plan and the RA Work Plan.

14. Approval Procedures for Work Plans and Other Documents.

a. Upon review of each work plan or other document required to be submitted and approved by U.S. EPA pursuant to this Decree, and after consultation with the State, the U.S. EPA Remedial Project Manager (the "RPM") shall notify Settling Defendants, in writing, that a document is (1) approved, (2) disapproved, (3) returned to Settling Defendants for modification, or (4) approved as modified by U.S. EPA to cure deficiencies. An explanation shall be provided for any disapproval or required modification.

b. Upon approval or modification of a submission by U.S. EPA, Settling Defendants shall proceed to implement the work required.

c. In the event of partial U.S. EPA disapproval or request for modification by Settling Defendants, the Settling Defendants shall proceed to implement the work in any approved portions of the submission upon request by U.S. EPA, and shall submit a revised document to U.S. EPA and the State curing the deficiencies within 30 calendar days of receipt of notice from U.S. EPA or such other time as may be agreed to by the parties.

d. Settling Defendants may submit any disapproval, modification, or conditions of approval to which they object, for dispute resolution pursuant to Section XIV hereof. The provisions of Section XIV (Dispute Resolution) and Section XVII (Stipulated Penalties) shall govern the implementation of Work and accrual and payment of any stipulated penalties during dispute resolution. Implementation of non-deficient portions of the submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XVII.

VII. ADDITIONAL WORK AND MODIFICATION OF THE SOW

15. No Warranty. The provisions of the SOW attached as Appendix 2 reflect the parties' best efforts at the time of execution of this Decree to define the technical work required to perform the remedial action described in the ROD with modifications. The Parties acknowledge and agree that approval by U.S. EPA of neither the SOW nor the Work Plan constitutes a warranty or representation of any kind that the SOW or Work Plan

will achieve the Cleanup and Performance standards, and shall not foreclose the United States or the State from seeking compliance with the applicable Cleanup and Performance Standards.

16. Modification of the Scope of Work. The parties recognize that modification of the SOW may be required at some point in the future, e.g. to provide for additional work needed to meet the Clean-up and Performance Standards specified above. In such event, the following procedures shall be followed to amend the SOW:

- a. The party that determines that additional work or other modification of the SOW is necessary shall provide written notice of such determination to the other parties.
- b. The other parties shall respond to such notice in writing within thirty (30) days of receipt or such other time as may be agreed to by the parties.

17. Modification by Agreement. If the parties agree on the modifications to the SOW, the agreement shall be in writing and shall be submitted, along with the amended SOW, for approval of the Court.

18. Dispute Resolution. If the parties do not agree on the proposed modifications, they shall initiate dispute resolution pursuant to Section XIV of this Decree. The scope and standard of review set forth in paragraph 40 shall govern any judicial determination in such dispute.

VIII. U.S. EPA PERIODIC REVIEW TO
ASSURE PROTECTION OF HUMAN HEALTH

AND THE ENVIRONMENT

19. To the extent required by Section 121(c) of CERCLA, 42 U.S.C. §9621(c), and any applicable regulations, U.S. EPA, in consultation with the State shall review the remedial action at the Facility at least every five (5) years after the entry of this Consent Decree to assure that human health and the environment are being protected by the remedial action being implemented. If upon such review, U.S. EPA determines that further response action is appropriate at the Facility in accordance with Section 104 or 106, then, consistent with Section XVIII of this Consent Decree and with the NCP, the U.S. EPA, in consultation with the State, may take or require such action.

20. Settling Defendants shall be provided with an opportunity to confer with U.S. EPA on any response action proposed as a result of U.S. EPA's 5-year review and to submit written comments for the record. The final decision of U.S. EPA shall be subject to judicial review pursuant to the dispute resolution provisions in Section XIV hereof, if U.S. EPA, in consultation with the State, seeks to require the Settling Defendants to undertake such work.

IX. QUALITY ASSURANCE

21. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures in accordance with U.S. EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans" (QAM-005/80) and subsequent amendments to such guidelines upon notification to

Settling Defendants of such amendments by U.S. EPA. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit a Quality Assurance Project Plan ("QAPP") to U.S. EPA and the State, consistent with the SOW and applicable guidelines, in accordance with paragraphs 13-14 hereof. Validated sampling data generated consistent with the QAPP and reviewed and approved by U.S. EPA, in consultation with the State, shall be admissible as evidence, without objection, in any proceeding to enforce this Decree. Each laboratory utilized by Settling Defendants in implementing this Consent Decree shall be subject to approval by U.S. EPA in consultation with the State. Approval or disapproval shall be communicated as promptly as possible. Settling Defendants shall assure that U.S. EPA and State personnel or authorized representatives are allowed access to each such laboratory. In addition, Settling Defendants shall have their laboratory analyze samples submitted by U.S. EPA or the State for quality assurance monitoring.

X. FACILITY ACCESS, SAMPLING, DOCUMENT AVAILABILITY

22. Access to Facility and Other Property Controlled by Settling Defendants. As of the date of lodging of this Consent Decree, the United States and the State, and Settling Defendants' contractors shall have access at all times to the Facility, and shall have access to any other property controlled by or available to Settling Defendants to which access is necessary to

effectuate the remedial design or remedial action required pursuant this Decree. Access shall be allowed for the purposes of conducting activities related to this Decree, including but not limited to:

- a. Monitoring the Work or any other activities taking place at the Facility;
- b. Verifying any data or information submitted to the United States and/or the State;
- c. Conducting investigations relating to contamination at or near the Facility;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Facility;
- f. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Settling Defendants or their agents, consistent with this Decree and applicable law; or
- g. Assessing Settling Defendants' compliance with this Consent Decree.

23. Access to Other Property. To the extent that the Facility or other areas where Work is to be performed hereunder is presently owned by persons other than Settling Defendants, Settling Defendants shall use best efforts to secure from such persons access for Settling Defendants' contractors, the United States, the State, and their authorized representatives, as necessary to effectuate this Consent Decree. If access is not

obtained despite best efforts within forty-five (45) days of the date of entry of this Decree, Settling Defendants shall promptly notify the United States and the State. The United States and/or the State thereafter may assist Settling Defendants in obtaining access, to the extent necessary to effectuate the remedial action for the Facility, using such means as it deems appropriate. The United States and the State's costs in this effort, including attorney's fees and other expenses, and any compensation that the United States or the State may be required to pay for access to property located beyond the Facility's boundaries which is owned by persons other than those persons who have been notified that they are PRPs, shall be considered costs of response and shall be reimbursed by Settling Defendants in accordance with Section XVI of this Decree (Reimbursement).

24. Access Authority Retained. Nothing herein shall restrict in any way either the United States' or the State's access authorities and rights under CERCLA, RCRA or any other applicable statute, regulation or permit.

25. Sampling Availability. Settling Defendants shall make available to U.S. EPA and the State the results of all sampling and/or tests or other data generated by Settling Defendants with respect to the implementation of this Consent Decree. U.S. EPA and the State, upon request, shall make available to the Settling Defendants the results of sampling and/or tests or other data generated by U.S. EPA, the State, or their contractors.

26. Split Samples. Upon request a party taking samples shall allow other parties and/or their authorized representatives to take split or duplicate samples. The party taking samples shall give at least 14 days prior notice of sample collection activity to the other parties unless U.S. EPA specifically waives this requirement in writing.

XI. REPORTING REQUIREMENTS

27. Monthly Progress Reports. Settling Defendants shall prepare and provide to the United States and the State written monthly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month, and attach copies of appropriate supporting documentation; (2) include a summary of all results of sampling and tests and all other data received by Settling Defendants during the course of the work which has passed quality assurance and quality control procedures; (3) describe all actions, data and plans which are scheduled for the next month and provide other information relating to the progress of construction; (4) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of RD/RA Scope of Work or Work Plan, and a description of efforts made to mitigate those delays or anticipated delays. Progress reports are to be submitted to U.S. EPA and the State by the tenth day of every month following the lodging of this Consent Decree.

28. Other Reporting Requirements. Settling Defendants shall submit reports, plans and data required by the SOW, the RD Work Plan and the RA Work Plan or other approved plans in accordance with the schedules set forth in such plans.

29. Reports of Releases. Upon the occurrence of any event during performance of the Work which, pursuant to Section 103 of CERCLA, requires reporting to the National Response Center, Settling Defendants shall promptly orally notify the U.S. EPA Remedial Project Manager ("RPM") or On-Scene Coordinator ("OSC"), and the Indiana Remedial Project Manager, or in the event of the unavailability of the U.S. EPA RPM, the Emergency Response Section, Region V, United States Environmental Protection Agency, in addition to the reporting required by Section 103, and provide notice as required by 327 I.A.C. 2-6-2. Within 20 days of the onset of such an event, Settling Defendants shall furnish to the United States and the State a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken to respond thereto.

30. Annual Report. Settling Defendants shall submit each year, within thirty (30) days of the anniversary of the entry of the Consent Decree, a report to the Court, the United States and the State setting forth the status of response actions at the Facility, which shall include at a minimum a statement of major milestones accomplished in the preceding year, a statement of

tasks remaining to be accomplished, and the schedule for implementation of the remaining Work.

XII. REMEDIAL PROJECT MANAGER/PROJECT COORDINATORS

31. Designation/Powers. U.S. EPA shall designate a Remedial Project Manager ("RPM") and/or an On Scene Coordinator ("OSC") and the State shall designate a Project Coordinator for the Facility, and they may designate other representatives, including U.S. EPA and State employees, and federal and state contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. The RPM/OSC shall have the authority lawfully vested in an RPM/OSC by the National Contingency Plan, 40 CFR Part 300. In addition, the RPM/OSC shall have the authority to halt any work required by this Consent Decree and to take any necessary response action when conditions at the Facility may present an imminent and substantial endangerment to public health or welfare or the environment. Settling Defendants shall also designate a Project Coordinator who shall have primary responsibility for implementation of the Work at the Facility.

32. Communications. To the maximum extent possible, except as specifically provided in the Consent Decree, communications between Settling Defendants, the State and U.S. EPA concerning the implementation of the Work under this Consent Decree shall be made between the Project Coordinators and the RPM/OSC.

33. Identification of Personnel. Within twenty (20) calendar days of the effective date of this Consent Decree,

Settling Defendants, the State and U.S. EPA shall notify each other, in writing, of the name, address and telephone number of the designated Project Coordinator and an Alternate Project Coordinator, and the RPM/OSC and Alternate RPM/OSC. If the identity of any of these persons changes, notice shall be given to the other parties at least five (5) business days before the changes become effective.

XIII. FORCE MAJEURE

34. Definition. "Force Majeure" for purposes of this Consent Decree is defined as any event arising from causes beyond the control of Settling Defendants which delays or prevents the performance of any obligation under this Consent Decree notwithstanding Settling Defendants' best efforts to avoid the delay. Increased costs or expenses or non-attainment of the Performance or Clean-Up Standards shall not constitute "force majeure" events.

35. Notice to RPM Required. When circumstances occur which may delay the completion of any phase of the Work or delay access to the Facility or to any property on which any part of the Work is to be performed, whether or not caused by a "force majeure" event, Settling Defendants shall promptly notify the RPM and the State Project Coordinator by telephone, or in the event of their unavailability, the Director of the Waste Management Division of U.S. EPA. Within twenty (20) days of the event which Settling Defendants contend is responsible for the delay, Settling Defendants shall supply to the United States and the State in

writing the reason(s) for and anticipated duration of such delay, the measures taken and to be taken by Settling Defendants to prevent or minimize the delay, and the timetable for implementation of such measures. Failure to give such oral notice and written explanation in a timely manner shall constitute a waiver of any claim of force majeure.

36. If U.S. EPA agrees that a delay is or was attributable to a "force majeure" event, the Parties shall modify the SOW, RD Work Plan, or RA Work Plan to provide such additional time as may be necessary to allow the completion of the specific phase of Work and/or any succeeding phase of the Work affected by such delay.

37. If U.S. EPA does not agree with Settling Defendants that the reason for the delay was a "force majeure" event, that the duration of the delay is or was warranted under the circumstances, or that the length of additional time requested by Settling Defendants for completion of the delayed work is necessary, U.S. EPA shall so notify Settling Defendants in writing. Settling Defendants shall initiate a formal dispute resolution proceeding under paragraph 39 below no later than 15 days after receipt of such notice. In such a proceeding, Settling Defendants have the burden of proving that the event was a "force majeure", that best efforts were exercised to avoid and mitigate the effects of the delay, that the duration of the delay is or was warranted, that the additional time requested for completion of the Work involved is necessary to compensate for

the delay, and that the notice provisions of paragraph 35 were complied with.

XIV. DISPUTE RESOLUTION

38. The Parties to this Consent Decree shall attempt to resolve expeditiously any disagreements concerning the meaning, application or implementation of this Consent Decree. Any party seeking dispute resolution first shall provide the other parties with an "Informal Notice of Dispute" in writing and request an informal dispute resolution period, which shall not exceed thirty (30) days.

39. If the dispute is not resolved within the informal discussion period, any party may initiate formal dispute resolution by giving a written "Formal Notice of Dispute" to the other parties no later than the 15th day following the conclusion of the informal dispute resolution period. A party shall seek formal dispute resolution prior to the expiration of the informal discussion period where the circumstances require prompt resolution.

40. Formal dispute resolution for disputes pertaining to the selection or adequacy of remedial design or remedial action (including the selection and adequacy of any plans which are required to be submitted for government approval under this Decree and the adequacy of Work performed) shall be conducted according to the following procedures:

a. Within ten (10) days of the service of the Formal Notice of Dispute pursuant to the preceding paragraph, or such

other time as may be agreed to by the parties, the party who gave the notice shall serve on the other parties to this Decree a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position (hereinafter the "Statement of Position"), and shall provide copies of all supporting documentation on which such party relies.

b. Opposing parties shall serve their Statements of Position and copies of supporting documentation within twenty (20) days after receipt of the complaining party's Statement of Position or such other time as may be agreed to by the parties.

c. U.S. EPA shall maintain an administrative record of any dispute governed by this paragraph. The record shall include the Formal Notice of Dispute, the Statements of Position, all supporting documentation submitted by the parties, and any other material on which the U.S. EPA decisionmaker relies for the administrative decision provided for below. The record shall be available for inspection and copying by all parties. The record shall be closed no less than ten (10) days before the administrative decision is made, and U.S. EPA shall give all parties prior notice of the date on which the record will close.

d. Upon review of the administrative record U.S. EPA shall issue a final decision and order resolving the dispute.

e. Any decision and order of U.S. EPA pursuant to subparagraph d. shall be reviewable by this Court, provided that a Notice of Judicial Appeal is filed within 10 days of receipt of

U.S. EPA's decision and order. Judicial review will be conducted on U.S. EPA's administrative record and U.S. EPA's decision shall be upheld unless it is demonstrated to be arbitrary and capricious or in violation of law.

41. Judicial dispute resolution for any issues not governed by the preceding paragraph may be initiated by petition to the Court and shall be governed by the Federal Rules of Civil Procedure. Except as specifically provided in other provisions of this Decree, e.g. Section XIII, this Decree does not establish procedures or burdens of proof for such dispute resolution proceedings.

42. The invocation of the procedures stated in this Section shall not extend or postpone Settling Defendants' obligations under this Consent Decree with respect to the disputed issue unless and until U.S. EPA agrees otherwise. EPA's position on an issue in dispute shall control until such time as the Court orders otherwise in accordance with the provisions of this Section.

43. Any applicable Stipulated Penalties continue to accrue during dispute resolution, as provided in Section XVII hereof. Settling Defendants may seek forgiveness of stipulated penalties that accrue during dispute resolution by petition to U.S. EPA and/or the Court pursuant to paragraph 62. below.

44. Upon the conclusion of any formal or informal dispute resolution under this Section which has the effect of nullifying or altering any provision of the RD Work Plan or RA Work Plan or

any other plan or document submitted and approved pursuant to this Decree, Settling Defendants shall submit an amended plan, in accordance with the decision, to U.S. EPA and the State within fifteen (15) days of receipt of the final order or decision. Amendments of the SOW as a result of dispute resolution proceedings are governed by Section VII above. Amendments of a plan or other document as a result of dispute resolution shall not alter any dates for performance unless such dates have been specifically changed by the order or decision. Extension of one or more dates of performance in the order or decision does not extend subsequent dates of performance for related or unrelated items of Work unless the order or decision expressly so provides or the parties so agree.

XV. RETENTION AND AVAILABILITY OF INFORMATION

45. Settling Defendants shall make available to U.S. EPA and the State and shall retain the following documents until 6 years following the third "five-year review" conducted for the Facility pursuant to Section 121(c) of CERCLA (or the final review, if there are fewer than three reviews): all records and documents in their possession, custody, or control which relate to the performance of this Consent Decree, including, but not limited to, documents reflecting the results of any sampling, tests, or other data or information generated or acquired by any of them, or on their behalf, with respect to the Facility and all documents pertaining to their own or any other person's liability for response action or costs under CERCLA. After this period of

document retention, Settling Defendants shall notify U.S. DOJ, U.S. EPA and the State at least ninety (90) calendar days prior to the destruction of any such documents, and upon request by U.S. EPA or the State, Settling Defendants shall relinquish custody of the documents to U.S. EPA or the State.

46. Settling Defendants may assert business confidentiality claims covering part or all of the information provided in connection with this Consent Decree in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. §9604(e)(7), and pursuant to 40 CFR §2.203(b) and applicable State law. Information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 CFR Part 2, Subpart B and, if determined to be entitled to confidential treatment under State law by the State, afforded protection under State law by the State. If no such claim accompanies the information when it is submitted to U.S. EPA and the State, the public may be given access to such information without further notice to Settling Defendants.

47. Information acquired or generated by Settling Defendants in performance of the Work that is subject to the provisions of Section 104 (e)(7)(F) of CERCLA, 42 U.S.C. §9604(e)(7)(F), shall not be claimed as confidential by Settling Defendants.

48. In the event that Settling Defendants' obligation to produce documents under this Section includes documents which are privileged from disclosure as attorney-client communications, attorney work-product or other privilege recognized by law,

Settling Defendants may seek to withhold production of such documents to avoid improper disclosure. At the time production is requested, Settling Defendants must provide the United States and the State all information necessary to determine whether the document is privileged, including such information as is generally required under the Federal Rules of Civil Procedure. If either the United States or the State does not agree with the Settling Defendant's claim of privilege, Settling Defendants may seek protection of the documents from the Court. Settling Defendants shall not withhold as privileged any information or documents that are created, generated or collected pursuant to requirements of this Decree, regardless of whether the document has been generated in the form of an attorney-client communication or other generally privileged manner. Settling Defendants may not withhold as privileged any documents that are subject to the public disclosure provision of Section 104(e)(7)(F) of CERCLA, 42 U.S.C. §9604(e)(7)(F).

XVI. REIMBURSEMENT

49. a. Within 45 days of the entry of this Consent Decree, Settling Defendants shall pay \$3,068,323.42 to the EPA Hazardous Substances Superfund, delivered to the U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673 in the form of a certified or cashier check payable to "EPA Hazardous Substances Superfund," and referencing CERCLA Number TJB 05B 413 and DOJ Case Number 90-11-2-549. A copy of such check shall be sent to the Director, Waste Management Division, U.S. EPA, Region

V and to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, at the addresses provided in Section XXI (Notices). This payment is for partial reimbursement of past costs claimed by the United States in this action through December 31, 1990.

b. Settling Defendants shall pay within forty-five (45) days of the entry of this Consent Decree, \$15,775.00 dollars to the State for its past response costs. Payment shall be made by means of a check made payable to "Indiana Department of Environmental Management" and delivered to the Cashier, Indiana Department of Environmental Management, 105 S. Meridian Street, P.O. Box 7060, Indianapolis, Indiana 46206-7060. A copy of the check shall also be sent to the state project manager.

50. Settling Defendants shall pay all response costs incurred by the United States and the State after December 31, 1990, (hereinafter referred to collectively as "Future Response Costs"), including all Oversight Costs, all costs of access required to be paid pursuant to Section X hereof, and all costs incurred in enforcing this Decree but excluding those costs associated solely with any future cost recovery action against persons not signatories to this Decree where the United States has been successful in recovering those costs from persons other than signatories to this Decree.

51. a. Within 45 days of the entry of this Consent Decree, Settling Defendants shall pay \$20,000 to the Office of the

Secretary of the Interior for damage to federal natural resources at the Facility.

b. Within 45 days of the entry of this Consent Decree, Settling Defendants shall pay \$200,000 to the Indiana Department of Natural Resources for damage to state and joint federal/state natural resources at the Facility.

52. The United States and the State shall submit their claims for Future Response Costs incurred up to the date of entry of the Decree as soon as practicable after entry of the Decree. Claims for Future Response Costs shall be submitted periodically by U.S. EPA and the State, as practicable. Payments shall be made, as specified in paragraph 49 above, within 30 days of the submission of the above claims. Settling Defendants may inspect the United States' and the State's cost documentation upon request.

53. Settling Defendants may agree among themselves as to the apportionment of responsibility for the payments required by this Section, but their liability to the United States and the State for these payments shall be joint and several.

XVII. STIPULATED PENALTIES

54. Settling Defendants shall pay stipulated penalties in the amounts set forth below to the United States for each failure to complete any of the following requirements of this Consent Decree in an acceptable manner and within the time schedules specified in the SOW, the RD Work Plan or the RA Work Plan or in other plans submitted and approved under this Consent Decree:

	<u>PENALTY PER DAY</u>		
	<u>UP TO 30 DAYS</u>	<u>31 TO 60 DAYS</u>	<u>OVER 60 DAYS</u>
Failure to submit progress reports	\$500	\$1,000	\$2,500
Failure to submit any RD or RA Work Plan	\$2,500	\$7,500	\$10,000
Failure to comply with any schedule contained within RD or RA Work Plan	\$2,500	\$7,500	\$10,000
Failure to complete the following RA components:			
Soil Remediation:			
VOC-contaminated	\$2,500	\$7,500	\$10,000
Semivolatile contaminated	\$2,500	\$7,500	\$10,000
PCB-contaminated	\$2,500	\$7,500	\$10,000
Groundwater Extraction and Treatment	\$2,500	\$7,500	\$10,000
Monitoring Systems	\$2,500	\$7,500	\$10,000
Drum Investigation and Action	\$2,500	\$7,500	\$10,000
Failure to comply with notice or other requirements of this Consent Decree	\$500	\$2,000	\$5,000
Failure to take action to abate an endangerment under Section XXIII	\$10,000	\$15,000	\$20,000

At the United States' direction, Settling Defendants shall pay directly to the State a designated percentage of any of the stipulated penalties.

55. All penalties begin to accrue on the day after complete performance is due or the day a violation occurs, and continue to accrue through the final day of correction of the noncompliance or completion of performance. Any modifications of the time for performance shall be in writing and approved by U.S. EPA. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

56. Following U.S. EPA's determination, in consultation with the State, that Settling Defendants have failed to comply with the requirements of this Consent Decree, U.S. EPA shall give Settling Defendants written notification of the same and describe the non-compliance. This notice shall also indicate the amount of penalties due. However, penalties shall accrue as provided in the preceding paragraph regardless of whether U.S. EPA has notified Settling Defendants of a violation.

57. All penalties owed to the United States and the State under this Section shall be payable within 30 days of receipt of the notification of non-compliance, unless Settling Defendants invoke the dispute resolution procedures under Section XIV.

58. Settling Defendants may dispute the United States' (and, as applicable, the State's) right to the stated amount of penalties on the grounds that the violation is excused by the Force Majeure provisions of Section XIII or that it is based on a

mistake of fact. The dispute resolution procedures under Section XIV shall be followed for such a dispute.

59. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way Settling Defendants' obligation to continue and complete the performance required hereunder.

60. Penalties shall continue to accrue as provided in paragraph 55 during the dispute resolution period, but need not be paid until the following decision points:

a. If the dispute is resolved by agreement or by decision or order of U.S. EPA which is not appealed to this Court, accrued penalties shall be paid to U.S. EPA (and, as applicable, to the State) within fifteen (15) days of the agreement or the receipt of U.S. EPA decision or order;

b. If the dispute is appealed to this Court, accrued penalties shall be paid to U.S. EPA (and, as applicable, to the State) within fifteen (15) days of receipt of the Court's decision or order, except as provided in subparagraph c below;

c. If the District Court's decision is appealed by any party, Settling Defendants shall pay all accrued penalties into an interest-bearing escrow account within fifteen (15) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the appellate court decision, the escrow agent shall pay the balance of the account to U.S. EPA (and, as applicable, to the State)

and/or to Settling Defendants to the extent that they prevail, as determined pursuant to the following paragraph.

61. Settling Defendants shall not owe stipulated penalties for any items upon which they prevail in dispute resolution. Settling Defendants shall request a specific determination at each stage of dispute resolution as to the issues and items upon which they have prevailed and as to the amount of any stipulated penalties owed.

62. Notwithstanding the above provisions, the Settling Defendants shall have the right to petition the Court or U.S. EPA (according to the level of dispute resolution reached) for forgiveness of stipulated penalties that accrue during dispute resolution for items upon which they did not prevail, based on a finding (1) that the delay in work or other violation that caused the stipulated penalty to accrue was necessary and appropriate during the dispute resolution proceeding, (2) that Settling Defendants' position regarding the dispute had substantial support in law and fact and reasonably could have been expected to prevail, considering the applicable standard of review, and (3) that Settling Defendants sought dispute resolution at the earliest practicable time and took all other appropriate steps to avoid any delay in remedial action work as a result of the dispute. If the Court or U.S. EPA so finds, they may grant an appropriate reduction in the stipulated penalties that accrued during the dispute resolution period. Settling Defendants shall

have the burdens of proof and persuasion on any petition submitted under this provision.

63. Interest shall begin to accrue on the unpaid balance of stipulated penalties on the day following the date payment is due. Pursuant to 31 U.S.C. §3717, interest shall accrue on any amounts overdue at a rate established by the Department of Treasury for any period after the date of billing. A handling charge will be assessed at the end of each 30-day late period, and a six percent per annum penalty charge will be assessed if the penalty is not paid within 90 days of the due date. Penalties shall be paid as specified in paragraph 49 hereof.

64. If Settling Defendants fail to pay stipulated penalties, the United States and/or the State (if applicable) may institute proceedings to collect the penalties. In any such proceeding, penalties shall be paid as provided in paragraph 49 above.

65. Notwithstanding any of the above provisions, U.S. EPA and/or the State may elect to assess civil penalties and/or to bring an action in U.S. District Court pursuant to Section 109 of CERCLA or applicable State law to enforce the provisions of this Consent Decree. Payment of stipulated penalties shall not preclude U.S. EPA or the State from electing to pursue any other remedy or sanction to enforce this Consent Decree, and nothing shall preclude U.S. EPA or the State from seeking statutory penalties against Settling Defendants for violations of statutory or regulatory requirements.

XVIII. COVENANT NOT TO SUE

66. Except as otherwise specifically provided in the following paragraph or elsewhere in this Decree, the United States and the State covenant not to sue the Settling Defendants for Covered Matters. Covered Matters shall mean any and all claims available to the United States under Sections 106 and 107 of CERCLA and Section 7003 of RCRA relating to the Facility, and any and all claims relating to the Facility available to the State under Indiana Code 13-7-8.7 and common law nuisance. With respect to Future Liability, this covenant not to sue shall take effect upon certification by U.S. EPA of the completion of the remedial action concerning the Facility pursuant to Section XXVI below.

67. "Covered Matters" does not include:

- a. Liability arising from hazardous substances removed from the Facility;
- b. Criminal liability;
- c. Claims based on a failure by the Settling Defendants to meet the requirements of this Consent Decree;
- d. Any matters for which the United States or the State is owed indemnification under Section XIX hereof; or
- e. Liability for violations of Federal or State law which occur during implementation of the remedial action.

68. Notwithstanding any other provision in this Consent Decree, (1) the United States reserves the right to institute

proceedings in this action or in a new action or to issue an Order seeking to compel the Settling Defendants to perform any additional response work at the Facility, and (2) the United States and the State reserve the right to institute proceedings in this action or in a new action seeking to reimburse the United States for its response costs and to reimburse the State for its matching share of any response action undertaken by U.S. EPA and/or the State under CERCLA, relating to the Facility, if:

a. for proceedings prior to U.S. EPA certification of completion of the remedial action concerning the Facility,

(i) conditions at the Facility, previously unknown to the United States, are discovered after the entry of this Consent Decree, or

(ii) information is received, in whole or in part, after the entry of this Consent Decree,

and these previously unknown conditions or this information indicates that the remedial action is not protective of human health and the environment; and

b. for proceedings subsequent to U.S. EPA's certification of completion of the remedial action concerning the Facility,

(i) conditions at the Facility, previously unknown to the United States, are discovered after the certification of completion by U.S. EPA, or

(ii) information is received, in whole or in part, after the certification of completion by U.S. EPA,

and these previously unknown conditions or this information indicates that the remedial action is not protective of human health and the environment. In the event that the United States

institutes proceedings under this paragraph, Settling Defendants reserve all defenses and rights of contribution otherwise available to them.

69. For purposes of subparagraph a. of the preceding paragraph, the information received by and the conditions known to the United States are that information and those conditions set forth in the Record of Decision (the "ROD") attached as Appendix 1 hereto or in documents contained in U.S. EPA's administrative record supporting the ROD. For purposes of subparagraph b. of the preceding paragraph, the information received by and the conditions known to the United States are that information and those conditions set forth in the ROD, the administrative record supporting the ROD, or in reports or other documents submitted to U.S. EPA pursuant to this Consent Decree or generated by U.S. EPA in overseeing this Consent Decree prior to certification of completion.

70. Notwithstanding any other provisions in this Consent Decree, the covenant not to sue in this Section shall not relieve the Settling Defendants of their obligation to meet and maintain compliance with the requirements set forth in this Consent Decree, including the conditions in the ROD with modifications, which are incorporated herein, and the United States, in consultation with the State, reserves its rights to take response actions at the Facility in the event of a breach of the terms of this Consent Decree and to seek recovery of costs incurred after entry of the Consent Decree: 1) resulting from such a breach; 2)

relating to any portion of the Work funded or performed by the United States; or 3) incurred by the United States as a result of having to seek judicial assistance to remedy conditions at or adjacent to the Facility. In such instance, the State reserves its right to seek recovery of its 10 percent matching share of U.S. EPA's response action costs.

71. Notwithstanding any other provisions in this Consent Decree, the United States further reserves the right to institute proceedings against Settling Defendants in this action or in a new action seeking to recover damages for injury to, loss of, or destruction of natural resources of a type or degree that was either unknown to the United States on the date of lodging of this Decree, or occurred subsequent thereto.

72. Settling Defendants hereby release and waive any rights to assert any claims against the United States, the State, or any agency of the United States or the State relating to the Facility with the exception of claims against the United States Department of the Army, and the United States General Services Administration, which are brought under CERCLA and claims based on negligent actions taken or contracts entered into directly by those entities that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. The United States retains all rights, substantive, procedural, sovereign or other to defend against any such claims. No rights or defenses of the United States are waived, expressly or by implication. The Settling Defendants are put on notice that the Anti-Assignment Act is one such right or defense which is not waived.

73. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any

claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a signatory to this Consent Decree for any liability it may have arising out of or relating to the Facility. The United States and the State expressly reserve the right to continue to sue any person, other than the Settling Defendants and the Settling De Minimis Defendants, in connection with the Facility.

XIX. INDEMNIFICATION; OTHER CLAIMS

74. Settling Defendants agree to indemnify, save and hold harmless the United States, the State and/or their representatives from any and all claims or causes of action arising from the acts or omissions of Settling Defendants and/or their representatives, including contractors and subcontractors, in carrying out the activities pursuant to this Consent Decree. The United States and the State shall notify Settling Defendants of any such claims or actions promptly after receipt of notice that such a claim or action is anticipated or has been filed. This paragraph does not affect in any way the releases and waivers (and exceptions thereto) of rights set forth in paragraph 72, and does not provide indemnification to the United States Department of the Army, the United States Army Corp of Engineers, and the United States General Services Administration with respect to the accidental detonation of unexploded ordinance during the course of the cleanup.

75. The United States and the State do not assume any liability of Settling Defendants by virtue of entering into this

agreement or by virtue of any designation that may be made of Settling Defendants as U.S. EPA's representatives under Section 104(e) of CERCLA for purposes of carrying out this Consent Decree. The United States and the State are not to be construed as parties to any contract entered into by Settling Defendants in carrying out the activities pursuant to this Consent Decree. The proper completion of the Work under this Consent Decree is solely the responsibility of Settling Defendants.

76. Settling Defendants waive their rights to assert any claims against the Hazardous Substances Superfund under CERCLA or the Indiana Hazardous Substances Response Trust Fund under Indiana Code 13-7-8.7 that are related to any costs incurred in the Work performed pursuant to this Consent Decree, and nothing in this Consent Decree shall be construed as U.S. EPA's preauthorization of a claim against the Superfund or the State's preauthorization of a claim against Indiana's Trust Fund.

XX. INSURANCE/FINANCIAL RESPONSIBILITY

77. Settling Defendants shall purchase and maintain in force for the duration of the remedial action work, comprehensive general liability and automobile insurance with limits of \$5 million dollars, combined single limit, naming as insureds the United States and the State. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing work

on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work at the Facility, Settling Defendants shall provide U.S. EPA and the State with a certificate of insurance and a copy of the insurance policy. If Settling Defendants demonstrate by evidence satisfactory to the United States and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

78. Settling Defendants shall provide financial security, in the amount of \$31,685,000, in one of the forms permitted under 40 C.F.R. Section 264.145, to assure completion of the Work at the Facility. This amount shall be reviewed annually and if the estimated cost of completion of the work has become less than the amount of financial security, U.S. EPA shall reduce the amount of financial security. The amount by which the financial security may be reduced shall be in U.S. EPA's sole discretion and not reviewable under the Dispute Resolution provisions of this decree.

XXI. NOTICES

79. Whenever, under the terms of this Consent Decree, notice is required to be given, a report or other document is required to be forwarded by one party to another, or service of

any papers or process is necessitated by the dispute resolution provisions of Section XIV hereof, such correspondence shall be directed to the following individuals at the addresses specified below:

As to the United States or
U.S. EPA:

- a. Regional Counsel
Attn: Fisher-Calo
Coordinator (5CS)
U.S. Environmental
Protection Agency
230 S. Dearborn Street
Chicago, Illinois 60604
- b. Director, Waste Management
Division
Attn: Fisher-Calo Remedial
Project Manager (5HS-11)
U.S. Environmental Protection
Agency
230 S. Dearborn Street
Chicago, Illinois 60604
- c. Assistant Attorney General
Environment & Natural Resources
Division
U.S. Department of Justice
10th & Pennsylvania Ave., N.W.
Washington, D.C. 20530
Ref. D.J. # 90-11-2-549

As to the State of
Indiana:

- a. Attorney General
State of Indiana
Attn: Fisher-Calo
Coordinator
Rm 219, State House
Indianapolis, IN 42604
- b. Commissioner, Indiana
Department of
Environmental Management
105 S. Meridian
Indianapolis, IN 42606
Attn: Fisher-Calo
Project Manager, Superfund
Section, Office of
Environmental Response

As to Settling Defendants:

- a. Linda E. Benfield
Foley & Lardner
First Wisconsin Center
777 East Wisconsin Avenue
Milwaukee, WI 53202-5367
- b. Robert M. Olian
Sidley & Austin
One First National Plaza
Chicago, IL 60603

XXII.

CONSISTENCY WITH NATIONAL CONTINGENCY PLAN

80. The United States and the State agree that the Work and additional work if any, if properly performed, is consistent with the provisions of the National Contingency Plan.

XXIII.

ENDANGERMENT AND EMERGENCY RESPONSE

81. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of a hazardous substance into the environment which presents or may present an imminent and substantial endangerment to public health or welfare or the environment, Settling Defendants shall immediately take all appropriate action to prevent, abate, or minimize such release and endangerment, and shall immediately notify the RPM or, if the RPM is unavailable, the U.S. EPA Emergency Response Section, Region V, U.S. EPA. Settling Defendants shall take such action in accordance with all applicable provisions of the Health and Safety/Contingency Plan developed pursuant to the SOW and approved by U.S. EPA. In the event that Settling Defendants fail to take appropriate response action as required by this paragraph and U.S. EPA or the State takes such action instead, Settling Defendants shall reimburse all costs of the response action not inconsistent with the NCP. Payment of such response costs shall be made in the manner provided in Section XVI hereof.

82. Nothing in the preceding paragraph or in this Consent Decree shall be deemed to limit the response authority of the

United States under 42 U.S.C. §9604 or the State under Indiana Code 13-7-8.7.

XXIV. COMMUNITY RELATIONS

83. Settling Defendants shall cooperate with U.S. EPA and the State in providing information regarding the progress of remedial design and remedial action at the Facility to the public. As requested by U.S. EPA or the State, Settling Defendants shall participate in the preparation of all appropriate information disseminated to the public and in public meetings which may be held or sponsored by U.S. EPA or the State to explain activities at or concerning the Facility.

XXV. RETENTION OF JURISDICTION; MODIFICATION

84. Retention of Jurisdiction. This Court will retain jurisdiction for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, or relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIV hereof.

85. Modification. No material modification shall be made to this Consent Decree without written notification to and written approval of the parties and the Court except as provided below or in Section VII (Modification of the Scope of Work; Additional Work). The notification required by this Section shall set forth the nature of and reasons for any requested modification. No oral modification of this Consent Decree shall

be effective. Nothing in this paragraph shall be deemed to alter the Court's power to supervise or modify this Consent Decree.

XXVI. EFFECTIVE DATE AND CERTIFICATION OF COMPLETION OF REMEDY

86. This Consent Decree shall be effective upon the date of its entry by the Court, except to the extent provided in paragraph 13 regarding the commencement of remedial design upon lodging.

87. Certification of Completion of Remedial Action.

a. Application. When the Settling Defendants believe that operation of the groundwater pump and treat system has been completed and that the demonstration of compliance with Cleanup and Performance Standards has been made in accordance with this Consent Decree, they shall submit to the United States and the State a Notification of Completion of Remedial Action and a final report which summarizes the work done, any modification made to the SOW or Work Plan(s) thereunder relating to the Cleanup and Performance Standards, and data demonstrating that the Cleanup and Performance Standards have been achieved. The report shall be prepared and certified as true and accurate by a registered professional engineer and the Settling Defendants' Project Coordinator, and shall include appropriate supporting documentation.

b. Certification. Upon receipt of the Notice of Completion of Remedial Action, U.S. EPA shall review the final report and supporting documentation, and the remedial actions

taken. U.S. EPA, in consultation with the State, shall issue a Certification of Completion of Remedial Action upon a determination that Settling Defendants have completed operation of the groundwater pump and treat system in accordance with the terms of this Consent Decree and demonstrated compliance with Cleanup and Performance Standards, and that no further corrective action is required.

c. Post-Certification Obligations. Following Certification, Settling Defendants shall continue to perform the following Work: operate the groundwater monitoring system and implement the groundwater contingency plan, as described in paragraph 12 of this Decree and/or in Section II, D of the SOW.

XXVII. DE MINIMIS PROVISIONS

88. Within 120 days of the lodging of this Consent Decree with the Court, each Settling De Minimis Defendant shall pay to the Settling Defendants the respective sum reflected in column 4 of Appendix 5. Such payment shall be made in the manner directed by Settling Defendants no later than 60 days before the due date of such payment. The payment made by each Settling De Minimis Defendant is intended to represent its volumetric share of the estimated future response cost, oversight costs, and past response costs incurred and to be incurred at the Facility, and natural resource damage claims relating to the Facility. The payment made by each Settling De Minimis Defendant also includes a premium which is intended to pay for cost overruns incurred during implementation of the remedy and for supplemental remedies

or additional work to be performed in the event that the United States, in consultation with the State, determines the implemented remedy is not protective of public health or the environment. Such a payment by each of the Settling De Minimis Defendants is not a penalty or monetary sanction.

89. With regard to claims for contribution against Settling Defendants and Settling De Minimis Defendants for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendants and the De Minimis Settling Defendants, subject to their full performance hereunder, are entitled to such protection from contribution actions or claims relating to the facility as is provided by CERCLA Section 113(f)(2), 42 U.S.C. Section 9613(f)(2) and/or CERCLA Section 122(g), 42 U.S.C. Section 9622(g).

90. Certification by Settling De Minimis Defendants. By signing this Consent Decree, each Settling De Minimis Defendant certifies, to the best of its knowledge and belief, the following:

A. The Settling De Minimis Defendant has made reasonable inquiry to gather all information which relates in any way to its ownership, operation, generation, treatment, transportation, storage or disposal of hazardous substances or waste materials at or in connection with the Facility, and has provided to the United States all such information; and

B. The information provided under subparagraph A above is materially true and correct with respect to the amount of

waste materials that the Settling De Minimis Defendant may have shipped to the Facility and, to the best of the Settling De Minimis Defendant's knowledge and belief, the volume of hazardous substances or waste materials delivered by Settling De Minimis Defendant to the Facility is minimal in relation to the total volume of the hazardous substances or waste materials delivered to the Facility.

91. Nothing in this Consent Decree constitutes a covenant not to sue or take action or otherwise limits the ability of the United States or the State to seek or obtain further relief from any of the Settling De Minimis Defendants, and the covenant not to sue in Paragraph 92 of this Consent Decree is null and void, if information not currently known to the United States is discovered which indicates that any Settling De Minimis Defendant contributed hazardous substances or waste materials to the facility in such greater amount or of such greater toxic or other hazardous effect that the Settling De Minimis Defendant no longer qualifies as a De Minimis party because such party contributed greater than one per cent of the total volume of hazardous substances or waste materials, or, contributed disproportionately to the cumulative toxic or other hazardous effects of the hazardous substances or waste materials at the Facility.

92. A. Subject to all reservations of rights in this Section, upon payment by a Settling De Minimis Defendant of its respective amount as specified in Appendix 5, the United States and the State covenant not to sue that Settling De Minimis

Defendant for Settling De Minimis Defendants Covered Matters. Settling De Minimis Defendants Covered Matters shall include any and all civil claims relating to the Facility available to the United States under Sections 106 and 107 of CERCLA and Section 7003 of RCRA, and any and all civil claims relating to the Facility available to the State under Indiana Code 13-7-8.7 and common law nuisance.

B. The covenant not to sue set forth in subparagraph A above does not pertain to any matters other than those expressly specified to be Settling De Minimis Defendants Covered Matters. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against each Settling De Minimis Defendant with respect to all other matters, including but not limited to criminal liability.

C. Settling Defendants and Settling De Minimis Defendants acknowledge and agree that resolution of the matters addressed in this Consent Decree resolves all claims relating to the Facility existing between all Defendants who are signatories to this Decree. Subject to the Reservation of Rights in subparagraph B above, effective upon full payment by each Settling De Minimis Defendant as required in Paragraph 88 above, and in consideration of such payment, the Settling Defendants hereby covenant not to sue such Settling De Minimis Defendant and such Settling De Minimis Defendant covenants not to sue any Settling Defendant and any other Settling De Minimis Defendant who also has made such required payment, for any and all claims, controversies and

causes of action arising from or pertaining to matters covered or work performed under this Consent Decree, including Settling De Minimis Defendants Covered Matters, or otherwise related to the Facility. Nothing in this Consent Decree shall preclude any of the Parties from asserting such claims as they may have against Non-Settling PRPs.

93. Settling De Minimis Defendants hereby release and waive any rights to assert any claims relating to the facility against the United States, the State, any agency of the United States or the State, the Hazardous Substances Superfund, and the Indiana Hazardous Substances Response Trust Fund under Indiana Code 13-7-8.7.

XXVIII. EFFECT OF DECREE

94. Effect of Settlement. The entry of this consent decree shall not be construed to be an acknowledgment by the parties that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health or welfare or the environment. Except as provided in the Federal Rules of Evidence, the participation by any party in this decree shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding (except a proceeding to enforce this decree), as provided in Section 122(d)(1)(B) of CERCLA.

ENTERED this 27 day of February, 1992

[Signature]
U.S. District Judge

The parties whose signatures appear below hereby consent to the terms of this Consent Decree. The consent of the United States is subject to the public notice and comment requirements of Section 122(i) of CERCLA and 28 CFR Section 50.7.

UNITED STATES OF AMERICA

BY: [Signature]
Roger B. Clegg
Acting Assistant Attorney General
Environment & Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: DEC 26 1991

By: [Signature]
Daniel S. Jacobs
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044

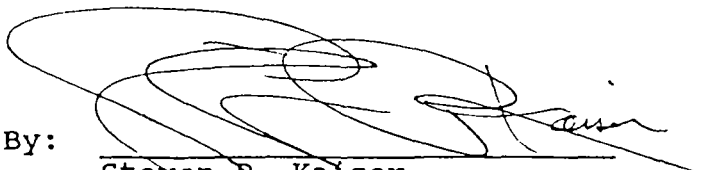
Date: Nov. 19, 1991

By: [Signature]
Valdas V. Adamkus
Regional Administrator
U.S. EPA, Region V

Date: Nov. 6th, 1991

Consent Decree: Fisher-Calo, La Porte County, Indiana

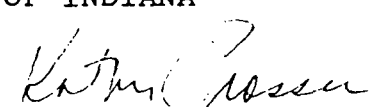
By:


Steven R. Kaiser
Assistant Regional Counsel
U.S. EPA, Region V

Date: SEPTEMBER 26, 1991

STATE OF INDIANA

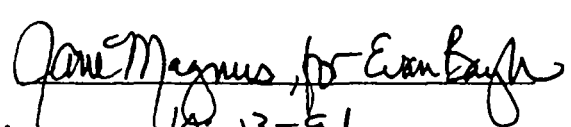
By:


Kathy Prosser
Commissioner
Indiana Department
Environmental Management

Date: 10-21-91

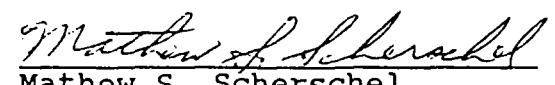
OFFICE OF THE GOVERNOR, STATE OF INDIANA

By:


Date: 10-23-91

Approved as to legality and form:
Linley E. Pearson, Attorney General,
State of Indiana

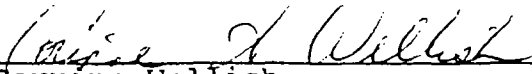
By:


Mathew S. Scherschel,
Deputy Attorney General

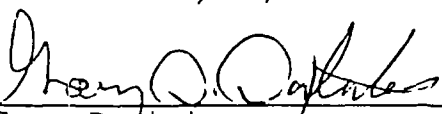
Date: October 31, 1991

Consent Decree: Fisher-Calo Site, La Porte County, Indiana

State of Indiana
CERCLA Co-Trustees for Natural Resources


Corrine Wellish
Indiana Department of
Environmental Management

Date: 10/7/91


Gary Doxtater
Indiana Department of
Natural Resources

Date: 10/7/91

Consent Decree: Fisher-Calo, La Porte County, Indiana